

# ARKANSAS SUPREME COURT

No. CR 08-574

BRENDA K. SPENCER and LUCILLE  
SHANKS SMITH  
Appellants

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      October 23, 2008

PRO SE MOTION TO SUPPLEMENT  
RECORD [CIRCUIT COURT OF  
ARKANSAS COUNTY, SOUTHERN  
DISTRICT, CR 74-17, HON. DAVID G.  
HENRY, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

## PER CURIAM

In 2008, appellants Brenda K. Spencer and Lucille Shanks Smith, inmates incarcerated in the Arkansas Department of Correction, filed a pro se motion for speedy trial in Arkansas County Circuit Court, in which they alleged that a jury had found them guilty of first-degree murder in 1974, but that they had not yet been sentenced. The trial court denied the motion and appellants have lodged an appeal in this court. Briefs have now been filed and the appellants bring this motion to supplement the record. We need not consider the motion to supplement the record, however, as it is clear upon the record before us that the trial court did not have jurisdiction to hear the motion and that appellants cannot prevail on appeal.

The record contains both a judgment entered on July 5, 1974, and a separate commitment order for each of the appellants. The judgments reflect the jury conviction on first-degree murder and the commitments reflect the imposition of a life sentence. The motion filed in the trial court attached copies of commitments with language that indicated each defendant stood mute at

sentencing, rather than modified language indicating instead that the right to formal sentencing was waived as is contained in the documents entered into the record. The appellants contended in their motion that they did not waive their right to formal sentencing and they argued that the judgments were invalid as to the sentences because they did not waive their right to formal sentencing and were never brought to a sentencing hearing. Appellants do not, however, dispute the fact that judgments and commitment orders were entered into the record following the jury verdict in 1974.

Under both current Arkansas Rules of Criminal Procedure 33.3(b) and the rule in effect in 1974, Arkansas Rules of Criminal Procedure 36.22, posttrial motions must be brought within a set period of time, that is, thirty days from the date the judgment is entered under the current rule, or the time fixed to file notice of appeal under the previous rule, which was also thirty days. Appellants did not file the motion for speedy trial within the time restriction set by the rule. The trial court was without jurisdiction to grant the motion because it was not timely.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353 Ark. 119, 110 S.W.3d 759 (2003) (per curiam); *see also Lukach v. State*, 369 Ark. 475, \_\_\_ S.W.3d \_\_\_ (2007) (per curiam). Because the trial court did not have jurisdiction to hear the motion for speedy trial, appellants cannot prevail. Accordingly, we dismiss the appeal and the motion to supplement the record is moot.

Appeal dismissed; motion moot.